

Internal Revenue Service
District Director

Department of the Treasury

Post Office Box 1680, GPO
Brooklyn, NY 11202

Date: **AUG 13 1997**

Person to Contact:

Contact Telephone Number:

Refer Reply to:

Employer Identification
Number:

CERTIFIED MAIL

Dear Applicant:

We have considered your application for tax-exempt status under section 501(c)(3) of the Internal Revenue Code.

The evidence presented disclosed that you were incorporated on [REDACTED]

The purpose for which the corporation was formed is to provide a ministry to youth through food, beverage and recreation.

The information submitted with your application indicates that your primary activity is to provide food, beverage and recreation to promote Christian faith and living. Information submitted in response to our letter dated March 12, 1997 states that your goal is to provide a safe place for youth in your community and to use a restaurant as a place where youth can spend their evenings. Another goal is that the interaction between the staff and the youth that takes place while they are spending time at the restaurant will promote not only Christian faith but simply a healthy lifestyle that strengthens the community.

You indicated that you have countless resources from local churches and friends that can help youth with various problems. The restaurant will have board games, pool tables, a library, local bands, and couches and recliner type chairs to relax and socialize. The restaurant will sometimes sponsor seminars.

Your response indicates that the restaurant will be operated daily by managers who are officers and other members of the organization. Half of these employees and including the two managers will be paid a salary. The restaurant will be opened to anyone who feels comfortable coming and also for someone who is looking for a meal.

The prices for the food would be comparable to a [REDACTED] or other efficient restaurant. You hope that by selling food and beverage that you can help pay for staff, costs of the kitchen, food, utilities, and rent.

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The proposed budgets that was submitted with your application indicates that 2% of the revenues will be coming from the restaurant and it will incur 2% of the expenses of the organization.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious, scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

In order to qualify under IRC 501(c)(3), an organization must be both "organized" and "operated" exclusively for one or more purposes specified in that section. If the organization fails to meet either the organizational test or the operational test, it is not exempt. (Regs. 1.501(c)(3)-1(a)(1)). The organizational test relates to the rules for governing an organization and the purposes stated in its articles of organization. The operational test relates to the organization's activities.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that if more than an insubstantial part of an organization's activities is not in furtherance of exempt purposes, the organization will not be regarded as exempt.

Section 1.501(c)(3)-1(c)(3)(i) of the Income Tax Regulations states that an organization is not operated exclusively for one or more exempt purposes if it is an "action" organization.

In Petter Business Bureau v. U.S., 326 U.S. 279 (1945), the Supreme Court stated that the presence of even a single, non-exempt purpose, if more than insubstantial in nature, will defeat exemption under Section 501(c)(3) of the Code, regardless of the manner or importance of the truly exempt purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides, in part, that an organization is not organized or operated exclusively for one or more of the purposes mentioned in section 501(c)(3) of the Code unless it serves a public rather than a private interest. An organization may not be exempt if it is operated for the benefit of private individuals.

Section 1.501(c)(3)-1(d)(2) of the Regulations provides that the term "charitable" includes relief of the poor and distressed, advancement of education and science and the promotion of social welfare designed to accomplish any of the above purposes. Section 1.501(c)(3)-1(d)(3) of the Regulations provides, in part, that the term "educational" relates to the instruction of the public on subjects useful to the individual and beneficial to the community. Museums and schools are included in the examples of educational organizations which, if they otherwise meet the requirements of section 501(c)(3) of the Code, may qualify under this section.

Revenue 73-127, 1973-1 C.B. 221 holds that a nonprofit organization that operates a retail grocery outlet and allocates a small portion of its earnings to provide on the job training to hard core unemployed individuals does not qualify for exemption from income tax. It was ruled that although the nature of the job training in this case is primarily on the job training and thus requires the existence of an operating business as its campus, the size and manner of the operation of the store as a retail grocery outlet is in itself an independent objective of the organization. It is conducted on a scale larger than is reasonably necessary for the performance of the organization's training program and was not intended to, nor does it in fact, serve solely as a vehicle for carrying out the training program of the organization.

Similar to the organization described in Revenue Ruling 73-127, your activities are directed at the operation of a restaurant as your primary activity. The operation of a restaurant, opened daily to the public with a permanent staff is not a recognized charitable activity. The organization is therefore not operated exclusively for charitable purposes.

We hold that you are not entitled to exemption under 501(c)(3) of the Code because you are not organized and operated exclusively for charitable educational purposes.

Accordingly, we conclude that you do not meet the requirements for exempt status under section 501(c)(3) of the Code and propose to deny your request for exemption under that section.

You are required to file a taxable return Form 1120 or 1041 with the District Director of Internal Revenue Service. Please send the return to the Internal Revenue Service, P.O. Box 1680, General Post Office, Brooklyn, NY 11202.

Contributions made to you are not deductible by the donors as charitable contributions as defined in section 170(c) of the Code.

If you do not agree with this determination, you may request a Conference with the Regional Director of Appeals by protesting in accordance with the enclosed instructions within 30 days.

Protests submitted which do not contain all the documentation stated in the instructions will be returned for completion.

If we do not hear from you within that time this determination will be considered final and the appropriate State Officials will be notified.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Sincerely yours,


District Director

Enclosure: Publication 892